



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

JOSEPH A. WELZEN

Serial No. 10/738,937

Filed: May 18, 2004

For: ANGULARLY ADJUSTABLE

TREE STAND

Date: 13 January, 2006

Group Art Unit 3632

Examiner: Ramirez, Ramon

**RESPONSE TO FINAL OFFICE ACTION AND AMENDMENT OF ORIGINAL
APPLICATION**

The Honorable Commissioner of
Patents & Trademarks
Alexandria, VA 22313

Sir:

INTRODUCTION

The Examiner has rejected claims 1-17 in a Final Office Action dated September 7, 2005.
The Examiner has objected to the following:

A. Response to Amendment filed August 15th, 2005 and Claim Objections

The Examiner has entered the claims that were filed June 28, 2005. However, the Examiner states that the claims still do not comply with the Office Rules. The Examiner requires that the claims must be underlined and any deletions to the claims must be struck out by drawing

a line across the deleted material.

The Examiner has offered to do the following to accelerate the prosecution of the application:

- Original claims 1-13 are still active in the case, although they must be cancelled in the next Response to Office Action.
- Claims 14-17 have been cancelled per Amendment by the Applicant.
- Claims 1-13 will be renumbered 18-30 as per Rule 1.176 and 37 CFR 1.126, which require that when new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented.

The Applicant accepts the Examiner's offers in the interest of a rapid prosecution of the application.

B. Information Disclosure Statement (IDS)

The Examiner has acknowledged receipt of the Information Disclosure Statement filed March 2, 2005 by the Applicant.

C. Drawings

The Examiner has accepted the drawings filed March 2, 2005 by the Applicant.

D. In the Specification

The Examiner has entered the substitute specification filed March 2, 2005.

E. Claim rejections under 35 USC §112, Second Paragraph

The Examiner states that claims 1-13 stand rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

The Examiner says that claims 18-30 are also indefinite since it is not clear if the Applicant intends to recite the tree as a positive element of the invention or not. The Examiner states that the preamble of claim 30 appears to recite the tree as a subcombination but that in line 3 the tree is positively recited (i.e. "...firmly attached..."). The Examiner requires that the Applicant must amend claim 18 to either clearly recite the tree as a positive element or else include functional language that the tree is not a positive element of the combination.

The Examiner, in the previous Office Action, states that these claims are mixing a method of using (the device) with the device's structure, which is not permitted by the Office.

Further, regarding Claim 1, the word "means" is preceded by the word(s) "...of retaining..." in an attempt to use a "means" clause to recite a claim element for performing a specified function. However, the Examiner declares, since no function is specified by the word(s) preceding "means", it is impossible to determine the equivalents of the element as required by 35 USC 112, sixth paragraph.

F. Claim Rejections under 35 USC § 103 (a)

The Examiner has rejected Claims 1-13 under 35 USC 103(a) as being unpatentable over Welzen (Patent Number 6,010,108) in view of St. George Syms (Patent Number 4,261,138).

Claims 18,20,21,28,29 and 30 are rejected under 35 USC 103(a) as being unpatentable over Welzen in view of Sofy et al (Pat. No. 6,357,173). The Examiner claims that the patent to Welzen shows a pot (18), cover (96), bowl (16) and base (12). The Examiner further claims that the patent to Sofy et al. show a base with lips. Therefore the Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the base shown by Welzen with the lips as shown by Sofy et al. for a variant of reasons, i.e. aesthetics, for example.

The Examiner goes on to say that, with regard to Claim 19, Welzen shows the use of guide holes for receiving fasteners (38) with the number of guide holes used being considered a matter of engineering expediency.